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United States and European Union Publish Lists of Products That May Be Subject to Retaliatory Tariffs

After more than a decade of World Trade Organization (“WTO”) disputes over aircraft subsidies, the United States and European Union have published preliminary lists of products that could face billions of dollars in retaliatory tariffs. On April 12, 2019, and in response to WTO findings that the European Union has failed to bring its aircraft subsidies into compliance with WTO obligations, the U.S. Trade Representative (“USTR”) published a preliminary list of products—including aircraft and food, beverage, and other products—that could be subject to increased duties when imported from the European Union. On April 17, 2019, and in response to similar WTO findings against the United States, the European Union published its own preliminary list of U.S. products—including aircraft, chemicals, and food and agricultural products—that could face increased duties when imported into the European Union. The United States and the European Union have established upcoming deadlines for comments on their preliminary product lists.

WTO LITIGATION AND RETALIATION

For over 15 years, the United States and the European Union have been involved in multiple WTO disputes regarding alleged subsidies for commercial aircraft production. In the two main disputes, the United States challenged alleged subsidies provided by the European Union and four EU member States (France, Germany, Spain, and the United Kingdom) in the dispute known as “DS316,” and the European Union challenged alleged subsidies provided by federal and state governments in the United States in the dispute known as “DS353.” The WTO panels and the Appellate Body made findings and recommendations largely favorable to the complainant in each dispute, and they found in 2018 and in March 2019 that neither the United States nor the European Union have brought themselves into full conformity with their WTO obligations regarding subsidies.



In response to these rulings of non-compliance on the part of both the United States and the European Union, each party already invoked its right to retaliate against the other under WTO rules, and each party has sought WTO arbitration to determine the level of authorized retaliation. The United States expects that the arbitrator will decide on the level of authorized retaliation by summer 2019, and a decision on the European Union's authorized retaliation is not expected before the first quarter of 2020. After each arbitration decision is released, the WTO's Dispute Settlement Body will grant authorization for each party to impose countermeasures.

UNITED STATES' PRELIMINARY LIST OF PRODUCTS

On April 12, 2019, USTR officially initiated an interagency investigation to determine whether and to what extent the United States should retaliate against the European Union for failing to bring its subsidies into conformity with its WTO obligations in DS316. USTR proposed retaliating against the European Union and that the countermeasures include additional *ad valorem* import duties of up to 100 percent on a preliminary list of EU products. Section 1 of USTR's preliminary list includes certain helicopters, commercial aircraft, and aircraft-related products that—if originating in France, Germany, Spain, or the United Kingdom—would be subject to additional duties. Section 2 of the list contains several food, beverage, and other products that would be subject to the duties if originating in any EU member State.

USTR seeks public comments on its proposal for retaliation, including the product list, and will hold a public hearing. Requests to appear at the public hearing and a summary of testimony are due by May 6, and the public hearing will be held on May 15. Written comments, including post-hearing rebuttal comments, are due by May 28. Parties may comment on whether products should be retained, removed, or added to the list, the amount of any additional duties, and other topics. After the release of the WTO arbitrator's decision regarding the level of authorized retaliation, USTR plans to publish a final list of products taking into account the WTO arbitrator's calculation and other information.

EUROPEAN UNION'S PRELIMINARY LIST OF PRODUCTS

On April 17, 2019, the European Union published its preliminary list of U.S. products that could be subject to additional *ad valorem* import duties of up to 100 percent in response to the U.S. failure to bring its subsidies into conformity with its WTO obligations in DS353. The EU list covers a wide variety of U.S. products, including aircraft, chemicals, and agricultural and food products. The European Union also initiated a public consultation on its preliminary list of products, and parties that may be affected by the additional duties may provide information by May 31. The European Union's notice did not mention a public hearing, and—similar to the United States—the European Union will not finalize its list until after the WTO arbitrator decides on the appropriate level of countermeasures.

BROADER CONTEXT OF U.S.-EU RELATIONSHIP AND AIRCRAFT SUBSIDIES

The U.S. and EU announcements come at a unique time in the U.S.-EU economic relationship. On April 15, 2019, within days of the U.S. and EU announcements of potential tariffs, the European Commission announced that it received authority from EU member States to begin negotiations with the United States for two trade agreements. The first agreement would focus exclusively on eliminating tariffs on industrial goods, and the second agreement would aim to make it easier for companies to conform their products to technical requirements from both parties. However, negotiations might stall given that the United States is adamant that farm products should be part of the formal trade negotiations, and President Trump has suggested the possibility of additional tariffs on EU automobiles if agricultural products are not on the table. Both the United States and the European Union are willing to discuss their retaliatory tariffs, and the possibility of increased duties likely will play a role in the broader trade negotiations between the parties.

Furthermore, considering the 15 years of WTO disputes between the two parties over aircraft subsidies, the objectives of the United States and European Union in announcing retaliatory tariffs may include establishing leverage to encourage



discussions on an agreement to discipline subsidies to the aircraft sector. USTR's "ultimate goal is to reach an agreement with the EU to end all WTO-inconsistent subsidies to large civil aircraft."

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